IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2626 OF 2005

M/s.Apna Sahakari Bank Ltd. .. ..Petitioner
Versus
Mr.Dilip Pandurang Chavan .. ..Respondent

Mr.R.M.Joshi for petitioner

Mr.C.U.Singh with Mahesh Londhe i/b Sanjay Udeshi & Co.for respondent

CORAM : P.V.KAKADE, J.

DATE : 14TH NOVEMBER,2005

P.C.:

1. Heard the learned counsel for both the parties.

2. By this petition the petitioner has sought quashing and setting aside the impugned judgment and order of the Labour Court at Mumbai dated 15th July 2003 in Complaint (ULP) No.720 of 1998 and Order dated 21st April 2005 in Revision Application (ULP) No.7 of 2004.

3. It must be noted that in the Labour Court in Complaint (ULP) No.720 of 1998 three preliminary issues were raised including the preliminary issues to the effect that whether the complainant is "workman" under

Section 2(s) of the Industrial Disputes Act or under Section 3(50) of the MRTU & PULP Act, 1971, and whether the Court had jurisdiction to entertain the Complaint? Both these aspects were answered in the affirmative holding that the Court had jurisdiction to entertain the complaint and complainant was "workman" as contemplated under Section 2(s) of the Industrial Disputes Act. A Revision Application was carried by the present petitioner to the Industrial Court. The Industrial Court came to the conclusion that the finding recorded by the Labour Court was legal and proper and therefore, revision application was dismissed. Hence, this writ petition came to be filed.

4. At the outset, it may be noted that the petitioner has come against the concurrent findings recorded by the lower courts holding that the respondent was a workman. The learned counsel for the respondent raised preliminary objection to the effect that it was not a proper stage, nor it was proper to entertain the Petition at this stage, especially when both the parties were at liberty to get the matter adjudicated on merits finally before the concerned lower court. In support of this contention the learned counsel for the respondent

brought to my notice the relevant principles laid down by the Apex Court in the case of **D.P. Maheshwari vs. Delhi Administration and Ors. reported in (1983) 4 SCC 293** as well as **National Council for Cement and Building Materials vs. State of Haryana and Ors. reported in (1996) 3 SCC 206**, wherein it was observed by the Apex Court as follows -

> 12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.
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> 13. This Court in Cooper Engineering Ltd. vs. P.P. Mundhe - in order to obviate undue delay in the adjudication of the real dispute, observed that the Industrial Tribunals should decide the preliminary issues as also the main issues on merits altogether so that there may

> not be any further litigation at the interlocutory stage. It was further observed that there was no justification for a party to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the Tribunal on the preliminary issue before the High Court.

Therefore, there is no doubt whatsoever that the ratio laid down by the Supreme Court's ruling, as noted aforesaid, categorically establishes that there is no justification for the parties to the proceedings to stall the final adjudication of the dispute referred to the Tribunal by questioning the decision of the tribunal on the preliminary issue before the High Court.

. Under the circumstances, I am inclined to hold that the Petition at this stage is not maintainable, as this is not proper stage to challenge the impugned orders of the lower court, nor there is any propriety for the High Court to entertain the dispute in such a manner. This is especially so when both the parties would have ample opportunity to get the dispute adjudicated in this regard before the proper forum, that

is the lower courts. In view of this position, I am not inclined to entertain the Petition and thus it stands dismissed with no order as to costs.